



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 486

IN THE MATTER OF FRANK A. EMILIO

DISPOSITION AGREEMENT

This Disposition Agreement ("Agreement") is entered into between the State Ethics Commission ("Commission") and former Representative Frank A. Emilio ("Rep. Emilio") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On June 22, 1993, the Commission initiated, pursuant to G.L. c. 268B, §4(a), a preliminary inquiry into allegations that Rep. Emilio had violated the conflict of interest law, G.L. c. 268A. The Commission has concluded its inquiry and, on January 25, 1994, voted to find reasonable cause to believe that Rep. Emilio violated G.L. c. 268A, §3.

The Commission and Rep. Emilio now agree to the following facts and conclusions of law:

1. Rep. Emilio served in the state legislature for five terms from January 1981 to January 1991.
2. During his ten years in the House of Representatives, Rep. Emilio served on the Joint Committee on Insurance. The majority of bills dealing with the regulation of the insurance industry are assigned to the Joint Committee on Insurance. As an Insurance Committee member, Rep. Emilio participated in the hearings and committee votes on hundreds of insurance bills. He also voted on such bills if they reached the House floor.
3. Rep. Emilio sponsored or co-sponsored dozens of bills affecting the insurance industry.
4. During the period relevant here, F. William Sawyer ("Sawyer") was the senior John Hancock Mutual Life Insurance Co., Inc. ("Hancock") lobbyist responsible for Massachusetts legislation. He was also a registered legislative agent (for Hancock) in Massachusetts. Hancock, a Massachusetts corporation, is the nation's sixth largest life insurer doing business in all 50 states. It offers an array of life, health and investment products. As a Massachusetts domiciliary, it is more subject to Massachusetts laws and regulations than to those of any other state.
5. During the period relevant here, William Carroll ("Carroll") was a registered legislative agent for the Life Insurance Association of Massachusetts ("LIAM"). LIAM is a trade association of life insurance companies doing business in Massachusetts.
6. During the period relevant here, Edward Dever ("Dever") was a Massachusetts registered legislative agent for the Massachusetts Life Insurance Company.
7. During the period relevant here, Alvaro Sousa ("Sousa") was a Massachusetts registered legislative agent for the New England Mutual Life Insurance Company.
8. During the period relevant here, John Spillane ("Spillane") was a Massachusetts registered legislative agent for the Paul Revere Insurance Companies.

9. During the period relevant here, James T. Harrington (“Harrington”) served as the vice-president for the American Insurance Association, a nationwide trade association of 250 property and casualty insurance companies. Harrington was also a Massachusetts registered legislative agent.

10. Rep. Emilio knew Sawyer, Carroll, Sousa, Dever, Spillane, Harrington and Joseph McEvoy (“McEvoy”) were lobbyists representing the insurance industry. On occasion, these individuals testified before the Insurance Committee and lobbied Rep. Emilio regarding various pieces of legislation. Additionally, Rep. Emilio sponsored a number of bills at the request of Sawyer, Spillane and McEvoy.^{1/}

11. Lobbyists are employed to promote, oppose or influence legislation.

12. One way in which some lobbyists further their legislative goals is to develop or maintain goodwill and personal relationships with legislators to ensure effective access to them. Some lobbyists entertain legislators through meals, drinks, golf and tickets to sporting events in order to develop the desired goodwill and personal relationships.

13. During August 20 - 23, 1988, Rep. Emilio and his family attended a Council of State Governments conference in Burlington, Vermont. On Sunday August 21, 1988, Rep. Emilio played golf with Sawyer. Sawyer paid \$80 for their golf and entertainment expenses. On Monday evening, August 22, 1988, Sawyer hosted Rep. Emilio and his wife and a Vermont legislator and his guest to a dinner at the Ice House restaurant. The cost of the dinner was \$142.46. Rep. Emilio’s pro rata share of the golf and dinner expenses was approximately \$96.98.

14. From November 28 to November 30, 1988, Rep. Emilio and his spouse attended a Council of Insurance Legislators conference in Atlanta, Georgia. On the evening of November 29, 1988, Sawyer hosted Rep. Emilio and his wife and four other legislators and their guests to a dinner at Pano & Paul’s Restaurant. The cost of the dinner was \$997.97. The Emilios’ pro rata share of the cost of the dinner was approximately \$181.41.

15. Hancock maintains a corporate box at the Boston Red Sox 600 Club. Sawyer invited Rep. Emilio to be his guest in the 600 Club for three Red Sox games on June 13, 1989, April 9, 1990 and August 21, 1990. The cost of the box to Hancock was \$75 a game, per seat. At the ball games, Sawyer provided Rep. Emilio with drinks and meals. Rep. Emilio’s share of the dinner and drink bills was \$3.93 for the June 13, 1989 game, \$25.71 for the April 9, 1990 game, and \$29.04 for the August 21, 1990 game. The total value of the tickets, drinks and meals provided to Rep. Emilio at the ball games was \$283.68.

16. During November 24-28, 1990, Rep. Emilio and his spouse were in Walt Disney World, Florida. Rep. Emilio had registered to attend an educational conference sponsored by the Conference of Insurance Legislators.^{2/} On the evening of November 24, 1990, Rep. Emilio and his spouse, along with approximately eighteen other lobbyists, legislators (from a number of states) and their guests ate at the Stouffer Hotel in Orlando. The cost of the meal was \$2,243.97. The Emilios’ pro rata share of the dinner expenses was approximately \$117.00. Carroll hosted the dinner, and LIAM paid for the meals. On that same day, Sawyer entertained Rep. Emilio and two other legislators at the Grand Cypress Golf Club. The cost of this golf and entertainment was \$468.89. Rep. Emilio’s pro rata share of the golf and entertainment was \$117.12.

17. On November 28, 1990, Sawyer provided Epcot Center tickets and lunch to the Emilios and two other legislators and their spouses. According to Sawyer’s expense records, the combined cost of the tickets and lunches was \$246.06. The Emilios’ pro rata share of the tickets and lunches was approximately \$61.00. On the evening of November 28, 1990, Rep. and Mrs. Emilio, along with approximately ten other legislators, lobbyists and their guests ate at the Buena Vista Palace at Walt Disney World. The cost of the dinner was \$342.48. The Emilios’ pro rata share of the dinner was approximately \$63.00. Sawyer paid for the dinner.

18. On January 8, 1991, Sawyer, Dever, Carroll, Spillane, Harrington and Sousa hosted a private testimonial dinner for Rep. Emilio at Joe Tecce’s Restaurant in Boston. Several days earlier, Rep. Emilio had left the legislature. According to an internal Hancock memorandum written by Sawyer, Rep. Emilio’s departure from the State House was “notable” as he had been “very helpful to John Hancock.” The lobbyists gave Rep. Emilio a \$404.25 set of golf clubs. Rep. Emilio’s share of the dinner expenses was \$60.11. Thus, Rep. Emilio received a total of \$464.36 in gratuities.

19. Section 3(b) of G.L. c. 268A prohibits any present or former state employee from directly or indirectly

receiving anything of substantial value for or because of any official act or act within his official responsibility performed or to be performed by him.

20. Massachusetts legislators are state employees.

21. Anything worth \$50 or more is of substantial value for §3 purposes.^{3/}

22. By accepting a total of \$1,384.00 in meals, golf, gifts and sports tickets from lobbyists all while Rep. Emilio was in a position, or had recently been in a position, to take official actions which could benefit, and in some instances did benefit, those lobbyists, Rep. Emilio received items of substantial value for or because of official acts or acts within his official responsibility performed or to be performed by him. In doing so, he violated G.L. c. 268A, §3(b).^{4/}

23. The Commission is aware of no evidence that the gratuities or gifts referenced above were provided to Rep. Emilio with the intent to influence any specific act by him as a legislator or any particular act within his official responsibility. The Commission is also aware of no evidence that Rep. Emilio took any official action concerning any proposed legislation which would affect any of the registered Massachusetts lobbyists in return for the gratuities or gifts. However, even though the gratuities were only intended to foster official goodwill and access, they were still impermissible.^{5/}

24. Rep. Emilio has fully cooperated with the Commission throughout its investigation.

In view of the foregoing violations of G.L. c. 268A by Rep. Emilio, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Rep. Emilio:

(1) that Rep. Emilio pay to the Commission the sum of four thousand, two hundred dollars (\$4,200.00)^{6/} as a civil fine for violating G.L. c. 268A, §3(b); and

(2) that Rep. Emilio waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement and in any related administrative or judicial proceedings to which the Commission is or may be a party.

Date: May 12, 1994

^{1/} For example, in 1990 Rep. Emilio sponsored H. 553 on McEvoy's behalf. This bill sought to enhance privacy for insurance consumers. The Commissioner of Insurance and the Civil Liberties Union had filed competing bills that were disfavored by the insurance companies. Also in 1990, Rep. Emilio sponsored H. 734 on Sawyer's behalf. House Bill 734 sought to permit insurers to value real estate ownership interests at their assessed value. House Bill 734 was approved by the legislature and signed into law on September 18, 1990.

^{2/} Rep. Emilio registered for each of the three conferences mentioned in this agreement. Rep. Emilio's practice was to attend approximately one-half of the workshops and presentations scheduled at each conference.

^{3/} See *Commonwealth v. Famigletti*, 4 Mass. App. Ct. 584, 587 (1976); *EC-COI-93-14*.

^{4/} For §3 purposes, it is unnecessary to prove that the gratuities given were generated by some specific identifiable act performed or to be performed. As the Commission explained in *Advisory No. 8* (issued May 14, 1985) prohibiting private parties from giving free tickets worth \$50 or more to public employees who regulate them,

Even in the absence of any specifically identifiable matter that was, is or soon will be pending before the official, §3 may apply. Thus, where there is no prior social or business relationship between the giver and the recipient, and the recipient is a public official who is in a position to use [his] authority in a manner which could affect the giver, an inference can be drawn that the giver was seeking the goodwill of the official because of a perception by the giver that the public official's influence could benefit the giver. In such a case, the gratuity is given for his yet unidentifiable "acts to be performed."

Specifically, §3 applies to generalized goodwill-engendering entertainment of legislators by private parties, even where no specific legislation is discussed. *In re Flaherty*, 1991 SEC 498, issued December 10, 1990 (majority leader violates §3 by accepting six Celtics tickets from billboard company's lobbyists). *In re Massachusetts Candy and Tobacco Distributors, Inc.*, 1992 SEC 609 (company representing distributors violates §3 by providing a free day's outing [a barbecue lunch, golf or tennis, a cocktail hour and a clam bake dinner], worth over \$100 per person, to over 50 legislators, their staffers and family members, with the intent of enhancing the distributors' image with the Legislature and where the legislators were in a position to benefit the distributors).

Section 3 applies to meals and golf, including those occasions motivated by business reasons, for example, the so-called “business lunch”. *In re U.S. Trust*, 1988 SEC 356. Section 3 also applies to entertainment gratuities of \$50 or more even in connection with educational conferences. *In re Stone & Webster*, 1991 SEC 522, and *In re State Street Bank*, 1992 SEC 582.

Rep. Emilio has argued that since he received the golf clubs and dinner when he was several days out of office and no longer in a position to officially benefit the lobbyists, his conduct could not violate §3. Section 3, however, explicitly applies to former public officials. The Commission has ruled that gratuities accepted as tokens of appreciation or gratitude for past performance of public functions violate §3. *In re Michael*, 1981 SEC 59, 67-8.

^{5/} As discussed above in footnote 3, §3 of G.L. c. 268A is violated even where there is no evidence of an understanding that the gratuities being given in exchange for a specific act performed or to be performed. Indeed, any such *quid pro quo* understanding would raise extremely serious concerns under the bribery section of the conflict of interest law, G.L. c. 268A, §2. Section 2 is not applicable in this case, as there was no such *quid pro quo* understanding between the lobbyists and Representative Emilio.

^{6/} This amount is approximately three times the value of the \$1,384 in prohibited gratuities received by Representative Emilio. The fine reflects a disgorgement of the improperly received gratuities plus a civil sanction.